IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (Ldg.) NO.2660 OF 2005

Manojkumar s/o.Prabhakar Lohar. ... Petitioner
Versus.
The State of Maharashtra & others. ... Respondents.

Shri S.G.Aney with Shri Mandar Goswami i/by Vimal Tiwari for the Petitioner.
Shri R.M.Sawant, G.P. for the Respondents 1 & 3.
Shri P.M.Pradhan for respondent 2.

CORAM : SMT.RANJANA DESAI &
ABHAY S. OKA, JJ.

DATED : 21st November, 2005.

P.C.:

1. In this petition the petitioner has challenged the notice dated 21.10.2005 issued by respondent 2, Maharashtra Public Service Commission, asking the petitioner to showcause as to why recommendation made in favour of the petitioner for being appointed as the Deputy Superintendent of Police, Grade (A) against the post reserved for Nomadic Tribe B category should not be withdrawn. Notice is issued on the ground that the selection of the petitioner is not beyond doubt as the caste certificate produced by the petitioner has been issued by the Executive Magistrate, Pune, whereas the petitioner is from Jalgaon and hence he was required to obtain caste certificate from Executive Magistrate, Jalgaon. Therefore, the said caste certificate is invalid as per the Government Circular No.CBC/1077/50876/D-5 dated 21st March 1979. It is also

stated in the notice that in his application submitted to the Commission for the said examination/test the petitioner has falsely declared that he belongs to the backward class of Nomadic Tribe (b).

2. We have heard the learned Counsel appearing for the petitioner at length. In our opinion, the petition will have to be dismissed as the petitioner has not availed of the efficacious remedy of approaching the Administrative Tribunal under section 15 of the Administrative Tribunals Act, 1985. This position is well settled by the Judgment of the Supreme Court in L.Chandra Kumar v/s. Union of India and others, (1997) 3 S.C.C., 261, wherein while interalia dealing with the question whether the Tribunals constituted either under Article 323-A or Article 323-B of the Constitution possess the competence to test the constitutional validity of statutory provision/rule, the Supreme Court has categorically stated as under:

> "The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular

Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

In view of this the petition cannot be entertained.

3. Shri Aney, the learned Counsel appearing for the Petitioner, however, placed reliance on a judgment of the Supreme Court in R.K.Rangarajan v/s. Government of Tamilnadu and others, [(2003) 6 SCC 581]. He contended that in that case after considering L.Chandra Kumar's case (supra), the Supreme Court has held that in exceptional cases the High Court can entertain such petition. In our opinion the judgment in R.K.Rangarajan's case is not applicable to the facts of this case. In that case, the unprecedented action of the Tamilnadu Government in terminating the services of all employees who had resorted to strike for their demands was challenged before the High Court by filing Writ Petition under Articles 226 and 227 of the Constitution of India. The High Court of Madras by its interim order interalia directed the Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. It was argued that in view of the decision in L.Chandra Kumar's

case the High Court should not have entertained the petition. The Supreme Court observed that there cannot be any doubt that the judgment of the Supreme Court in L.Chandra Kumar's case being of larger Bench is binding on the Supreme Court. But the Supreme Court clarified that if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. The Supreme Court described the said case as very very exceptional and held that the High Court could have entertained such a petition. In our opinion the present case does not present such very very exceptional circumstances. The petition therefore, cannot be entertained and is rejected.

4. At this stage the learned Counsel appearing for the petitioner states that the interim relief be granted. The prayer is rejected.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)